IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhuvanesh Vyas v. Indira Gandhi National Open University, New Delhi & Anr.

S.B.CIVIL WRIT PETITION NO.5023/1993
under Article 226 of the Constitution of India.

Date of Order : 16th August, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.C.Bhoot, for the petitioner.
Mr. J.K.Mishra, for the respondents.

BY THE COURT :

This petition for writ is preferred to quash the order dated 11.6.1993 passed by Registrar (Administration), Indira Gandhi National Open University, New Delhi (hereinafter referred to as "the University") and also to take the petitioner on duty with consequential benefits.

The facts, as set out in the petition for writ, are as follows:-

On being selected an offer was made to the petitioner by the Registrar of the University under a

letter dated 1/2.6.1989 for appointment as Senior Software Engineer. On acceptance of offer the petitioner reported on duty at New Delhi on the appointed date i.e. 16.6.1989 and was posted in computer division under its Director. The service of the petitioner stood confirmed w.e.f. 11.6.1990 by an order dated 6.2.1991.

The petitioner under an application dated 4.9.1992 sought leave from service for a period of 90 days to visit United States of America. The leave sought was approved by the authority competent. Being failed to return on duty as scheduled programme the petitioner sought extension of leave upto 12.7.1993. By communication Ex.5 the Registrar of the University while rejecting the request for extension of leave directed the petitioner to resume duties within a period of 30 days failing to which his services shall be terminated w.e.f. 22.9.1992. The petitioner thereafter made certain representations to the respondents for extension of leave but of no positive consequence. The petitioner ultimately reported on duty on 1.6.1993. A letter dated 11.6.1993 was received by him at Delhi from the Registrar of the University intimating that his services stood terminated w.e.f. 22.9.1992. Being aggrieved by the same, present petition for writ is preferred by the petitioner.

A reply to the writ petition has been filed on behalf of the respondents with an objection that as the order terminating the petitioner from service was issued by the Registrar of the University at Delhi and also the order dated 11.6.1993 too was issued and served upon the petitioner at Delhi, therefore, no cause of action or its part arose in State of Rajasthan, as such this Court lacks territorial jurisdiction to entertain and adjudicate present petition for writ.

This Court heard the counsel for the parties on the preliminary objection above. The counsel for the petitioner to maintain the petition before this Court urged as follows:-

(1) On basis of facts averred in the petition it is apparent that an offer for appointment in service was made to the petitioner at Jodhpur and same was accepted at Jodhpur, as such the contract for service acquired finality at Jodhpur, therefore, the cause of action in part arose in State of Rajasthan, as such this Court is having territorial jurisdiction to entertain and adjudicate the petition.

(2) The writ petition was admitted by this Court much back in the year 1993, therefore, now after a lapse of more than a period of 12 years this petition should not be dismissed on a preliminary objection otherwise same shall be arbitrary.

(3) The respondent University is having operation in entire country including State of Rajasthan, therefore, a cause against the respondent University could be raised anywhere in the country.

To substantiate the first contention the counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court in the case of Navinchandra N. Majithia v. State of Maharashtra & Ors., reported in 2000(7) SCC 640. In the aforesaid case Hon'ble Apex Court held that the High Court before which the writ petition is filed must ascertain whether any part of cause of action has arisen within territorial limits of its jurisdiction and this depends upon the facts of each case. It is emphasised by the counsel for the petitioner that offer of appointment in present case was made by the respondent University at Jodhpur and the same acquired finality on its acceptance, therefore, a part of cause of action arose within territorial jurisdiction of this Court. It is contended by the counsel for the petitioner that termination from service is in continuation of appointment, therefore, the cause of action is required to be treated arosed from the date the service contract acquired finality.

There cannot be any doubt that whether any part of cause of action has arisen within territorial limits of a court is required to be determined on

basis of facts pleaded and it depends upon the facts of each case. Hon'ble Supreme Court in the case of Navinchandra N. Majithia (supra) on basis of averments made in the petition for writ reached at the conclusion that part cause of action arose at Mumbai, therefore, petition for writ at Mumbai was held maintainable.

In the present case the averment made in the petition proves contrary. Even for the sake of argument the stand of the petitioner is accepted to the effect that cause in the present case is arising out of service contract, then too there is no averment in the petition that a contract came into force at Jodhpur by acceptance at Jodhpur. Nothing is said in the petition about place of acceptance of offer. It is simply stated by the petitioner that after acceptance of offer he reported in the office of respondents at New Delhi. The contract, therefore, came into force on joining services by the petitioner at Delhi. In view of it the contention made by the petitioner is without having any factual foundation.

Be that as it may, an important aspect of the matter is that no cause arose to seek judgment from the Court due to service contract. The cause of action arisen in the present case on termination of petitioner from services w.e.f. 22.9.1992 as communicated to the petitioner by communication dated

11.6.1993. The termination of the petitioner from service is not an out come of conditions mentioned in the offer made for appointment but is of consequence of other regulations made by the University. In view of it the contention of the counsel for the petitioner is devoid of merit.

The next contention of the counsel for the petitioner is that this Court admitted the writ petition much back in the year 1993, now after a lapse of more than a period of 12 years this petition should not be dismissed on a preliminary objection otherwise the same shall be arbitrary.

I do not find any force in the contention raised by the petitioner. The preliminary objection with regard to jurisdiction of Court is not of like the preliminary objection of availability of alternative remedy or delay and latches in filing the petition. In cases where such objections are raised the Court may refuse to entertain those objections on the count that the petition remained pending before the Court for a pretty long time. The principles of availability of alternative remedy and delay and latches are self restrainments and are rule of policy. The objection with regard to jurisdiction stands on absolutely on different pedestal. By the force of clause(2) of Article 226 of the Constitution of India the powers under Article can be exercised by a High

Court within its territorial jurisdiction. A writ and appropriate directions can also be issued to an authority situated outside the State if any cause of action or its part arose in the State where the High Court is having territorial jurisdiction. However, no writ or direction can be issued by the High Court to an authority situated beyond its territorial jurisdiction if the cause of action or its part has not arisen within the territorial jurisdiction of that Court. A jurisdiction which is not having with the Court cannot be vested with the Court merely by a flux of time. It is true that dismissal of the writ petition without adjudging merits after a lapse of about 12 years is painful for the parties to proceedings as well as for the Court but where the Court is having no jurisdiction then such pain is required to be borne by everybody including the Court.

However, it is relevant to mention here that the instant petition was admitted in the year 1993, the notices were served upon the respondents in the year 1994 and the matter was continuously listed before the Court for hearing upto 1998, but for the reasons best known to the parties the matter could not be heard being adjourned at the request of the parties. From 2002 till now the matter was again listed for hearing on number of occasions but then too the matter could not be heard for the reason of adjournments sought by the parties. The objection with

regard to territorial jurisdiction of this Court was taken by the respondents in their reply, the parties could have been saved from the pain of dismissal of the petition without adjudging the merits if the case would have been heard immediately after filing of reply.

In view of whatever discussed above I do not find any merit in the second contention of the counsel for the petitioner that this petition is required to be entertained as the same remained pending before this Court for a period of 12 years.

Counsel for the petitioner lastly contended that nature of working of the respondent University is nationwide, therefore, any of its act can be challenged anywhere in India. The respondent University being operational in State of Rajasthan, therefore, this Court is having territorial jurisdiction to entertain and adjudicate the petition against the University. I am having no doubt that a writ petition against the respondent University can be entertained by this Court subject to the condition that cause of action or its part arose in State of Rajasthan. If cause of action has not arisen in State of Rajasthan, in that event the writ petition cannot be entertained and adjudicated by this Court.

In the present case the petitioner was employed with the respondent University at Delhi, the order terminating him from service was communicated to him in United States of America and the communication reiterating the fact about termination of the petitioner from service too was served upon him at Delhi. The effect of the order terminating the petitioner from service fell on him at a place beyond territorial jurisdiction of this Court, as such no power under Article 226 of the Constitution of India can be exercised by this Court in the instant matter.

This petition for writ, therefore, is dismissed as this Court is having no territorial jurisdiction to entertain and adjudicate the same. It is open for the petitioner to agitate his cause before the Court having jurisdiction to entertain and adjudicate the cause of the petitioner.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.